IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3519 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KL GAJJAR - Petitioner
Versus
MANAGING DIRECTOR & 1 - Respondents

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Appearance :
MR YN OZA WITH MS. SHRUSHTI THOLA or Petitioner:
MR DEEPAK V PATEL for Respondents: 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 03/12/2007

ORAL JUDGMENT

Heard learned counsels for the parties.

1. The petitioner in this petition under Article

226 of the Constitution of India has challenged the order dated 17/3/1997 passed by the Disciplinary Authority imposing penalty of punishment of stoppage of 3 increments with future effect, as well as ordering recovery of the amount of Rs.1,53,030=25 as the petitioner was held to be liable for the 50 % loss suffered by the respondent - Gujarat State Civil Supplies Corporation Limited (hereinafter as “Corporation” for brevity); on the ground that the impugned order is violative of Article 14 and 16 of the Constitution of India and therefore the same deserves to be quashed and set aside.

2. Facts in brief are required to be narrated in order to appreciate the controversy involved in the present petition.

The petitioner was working as Assistant Manager (Compilation) at Navagam Godown at Surat. At that time another officer, namely one Mr. B.K. Solanki was working as Godown Manager. The petitioner received show cause notice on 18/20-11-1992 in respect of the lapses on his part. The show cause notice was in fact in the form of charge sheet. The departmental proceedings were proposed to be held against the petitioner under Rule 6 of the Gujarat State Civil Supply Corporation Ltd (Discipline & Appeal) Rules 1984 {hereinafter referred to as

the 'Disciplinary Rules' for the sake of brevity}. The Petitioner submitted his reply on 26/11/1992 repudiating the charges. Petitioner's reply was not found to be satisfactory and therefore the inquiry commenced. After completing the inquiry, Inquiry Officer submitted his report on 27/28-3-1995 holding the petitioner guilty of all the charges, except the first charge. The respondent issued second show cause notice along with copy of the Inquiry Officer's Report to the petitioner. Second show cause notice came to be issued on 2/5/1995 and petitioner replied to the second show cause notice vide his communication dated 30/9/1995 and also made statement on 4/12/1995. Ultimately the Disciplinary Authority passed an order dated 7/8/1996 imposing punishment of stoppage of 3 increments with future effect, as well as ordering recovery of Rs.3,06,060=50. The petitioner preferred appeal on 30/9/1996 against the said order and ultimately on 17/3/1997 Appellate Authority passed an order partly allowing the appeal, confirming the order of punishment of stoppage of 3 increments with future effect, however reducing the amount of recovery from Rs.3,06,060=50 to that of Rs.1,53,030-25. Said order is impugned in the present petition.

3. Ms. Thula for the petitioner has submitted that the impugned order deserves to be quashed and

set aside on the ground that the charge is that of negligence and or dereliction of duty and the same can not be said to be proved looking to the report of the Inquiry Officer. She has further submitted that other delinquent Shri. B.S. Solanki is in fact said to have been responsible for the misconduct which is alleged against him. The petitioner at the relevant time was in fact discharging his duty in respect of taking physical verification of departmental store – 'Kalpatru' and therefore, on the face of it Inquiry Officer's report could be said to be perverse as his reasonings are such as no reasonable man could have ever arrived at. Ms. Thula has further submitted that in the entire charge sheet no specific charge with regard to the actual loss to the Corporation is levelled and therefore, the resultant recovery order also deserves to be quashed and set aside. She submitted that the letter dated 28/3/1995 has not been taken into consideration as it is even mentioned by the Inquiry officer in his report and this has prejudiced the petitioner.

4. Shri. Patel for the petitioner has submitted that the inquiry proceedings have been in due compliance with the Disciplinary Rules and principles of natural justice have been duly complied with. The charge no.1 has been said to have been not proved by the Inquiry Officer and rest of the other charges have been proved which

can be seen from the detailed report of the Inquiry Officer which is on record of the petition. Mr. Patel in support of his submission has relied upon the decision of the Apex Court in case of U.P. SRTC Vs. RAM KISHAN ARORA, reported in (2007) 2 SCC (L&S) 64, and submitted that the disciplinary action being an administrative action the scope of judicial review under Article 226 of the Constitution of India is very limited. Shri. Patel has submitted that the charge sheet was issued and the departmental inquiry was conducted, except the first charge all the charges are said to have been proved and the petitioner has nowhere made any grievance of any prejudice or injustice caused to him in the proceedings. In light of these pleadings this Court may dismiss the petition.

5. Shri. Patel has further submitted that the Disciplinary Rules provide for ordering recovery of the amount from the salary payable to the delinquent in case of his misconduct is proved. The Corporation has suffered pecuniary loss, and in view of this clear provision the impugned order can not be said to have been inflicting double jeopardy as submitted by the petitioner. In view of this the petition deserves to be dismissed.

6. Heard learned counsels for the parties and

perused the record and proceedings. The first charge in respect of noncompliance with circular of 1982 containing administrative instructions is said to have been not proved and therefore the petitioner has been discharged from the said charge by the Inquiry Officer. In respect of the second charge in respect of the rice bags which were off loaded, namely 3 trucks and the goods were not accounted for as the goods off loaded did not find their entries in the register and they were ultimately shown to have been taken into account by proper entries in the subsequent months, is said to have been proved. The subsequent charge of non accountability of the rice bags and issuance of bags on the same permit twice has absolutely remained unexplained on account of negligence of the delinquent.

7. The Inquiry Officer as well as the Disciplinary Authority and the Appellate Authority have taken into consideration the defence of the delinquent in detail. The delinquent could not prove that on the dates in question he was engaged in physical verification of 'Kalpatru' store. On the contrary it is the finding recorded by the Inquiry Officer and accepted by the Disciplinary Authority as well as the Appellate Authority that as per the say of the delinquent when the trucks arrived i.e. 25th and 26th March 1992 the delinquent was not discharging his duties for

physical verification of 'Kapatru' store. This finding can not be said to be perverse in any way and therefore, this Court can not interfere with the same. But non availability of the letter dated 28/3/1995 as it is recorded by even the Inquiry Officer in his report can not be said to have caused any prejudice whatsoever to the delinquent. In fact as per the submission of Ms. Thula for the petitioner, the letter dated 28/3/1995 had been addressed and issued by the delinquent and therefore, it was always open to the delinquent to supply copy of the said letter even at least to the Disciplinary Authority and/or the Appellate Authority if it was ever of any help to him. It deserves to be noted that the petitioner has not even produced copy of the said letter in the memo of the petition in support of his submission that non-availability of the said letter caused serious prejudice so as to vitiate the inquiry proceedings. The findings of the Inquiry Officer as well as those of Disciplinary Authority and Appellate Authority so far as the dereliction in duty and petitioner's liability for the misconduct alleged do not deserve to be interfered with under Article 226 of the Constitution of India. The resultant order of punishment of stoppage of 3 increments with future effect also therefore does not deserve to be interfered with under Article 226 of the Constitution of India, as the inquiry proceedings have been held in accordance

with the Disciplinary Rules and there appears to be no breach of principle of natural justice in the entire proceedings. The scope of judicial review in such proceedings are well settled by now, and therefore, under Article 226 of the Constitution of India this Court is unable to interfere with the findings of the Inquiry Officer and upheld by the Disciplinary Authority and the Appellate Authority. In view of this, the order of penalty of stoppage of 3 increments with future effect also needs no interference.

8. Now, in view of the aforesaid, the question arises as to whether the order of recovery passed by the Appellate Authority of an amount of Rs.1,53,030=25 can be said to be justified and sustainable. It deserves to be noted that the principle of natural justice require that before visiting the employee with any civil consequences he has to be heard after informing him the specific proposed action. In the instant case as could be seen from the charge sheet, the proceedings of the inquiry, no specific charge with regard to the pecuniary loss to the Corporation was levelled against the present petitioner. The respondents have not produced any document indicating that the petitioner had ever been informed about the pecuniary loss to the Corporation and his liability for making it good. Therefore, naturally, during the inquiry proceedings the petitioner could not have

advanced his defence or plausible defence in this behalf. The Disciplinary Rules do provide recovery of pecuniary loss to the Corporation in case it is occurred on account of any misconduct and / or dereliction of duty on the part of the delinquent. But that in itself would not be sufficient to straightway order recovery of an amount from the delinquent especially when the delinquent has not been informed as to what was the exact pecuniary loss occurred to the Corporation nor it had been ever quantified before the Disciplinary Authority passed its order. It is for the first time reflected in the order of the Disciplinary Authority and, therefore, it can well be said that the delinquent did not have sufficient opportunity to meet with the specific allegation about his responsibility for making good the pecuniary loss to the Corporation. The order so far as the recovery of an amount of Rs.1,53,030=25 is concerned, same can be said to be unsustainable in eye of law.

9. In view of this, the order of punishment of withholding 3 increments with future effect is not interfered with and it remains. But the action of ordering recovery from the petitioner of an amount of Rs.1,53,030=25 is required to be quashed and set aside, and accordingly same is quashed. However, quashing of this order of recovery would not preclude the Corporation from

issuing appropriate show cause notice to the petitioner and affording him an opportunity to put forward his defence. If the Corporation chooses to issue show cause notice for recovering pecuniary loss from the petitioner the same shall be decided expeditiously as the petitioner is approaching his retirement on attaining the age of superannuation on 31/1/2008. In case the proceedings so initiated for recovering the pecuniary loss continues even after the date of superannuation of the petitioner, and if the Rules provides for such continuation, then, except the amount is said to be required to be recovered; the other retiral dues be paid to the petitioner.

10. Shri. Patel has expressed anxiety that this order may not result into quashing of the order passed against Mr. B.S. Solanki, another delinquent. It is reiterated that this order is passed based on the documents in respect of the present petitioner only and therefore the anxiety expressed by Shri. Patel is misconceived.

11. Ms. Thula's request for reserving liberty to challenge the order of recovery is misconceived as it goes without saying that the same being a different cause of action it would be always open to the petitioner to challenge the same in accordance with law.

12. In view above,this petition stands partly allowed. Rule made absolute to the aforesaid extent only. No cost.

[S.R. BRAHMBHATT, J]

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